UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

BLAINE HARRINGTON III,

Plaintiff,

v.

PERIKIN ENTERPRISES INC., and
PERIKIN ENTERPRISES LLC,

Defendants.

Civil Action No.: 1:17-cv-00533

COMPLAINT AND JURY DEMAND

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff, BLAINE HARRINGTON ("Plaintiff"), brings this complaint in the United States District Court for the District of New Mexico against PERIKIN ENTERPRISES INC. ("Perikin Inc."), and PERIKIN ENTERPRISES LLC ("Perikin LLC") (together "Defendants") alleging as follows:

PARTIES

1. Plaintiff is an experienced, commercial travel and location photographer. Plaintiff has worked as a commercial photographer for over forty years, including most major news, business, and travel magazines throughout the world, as well as traveled to over seventy countries. Plaintiff was chosen as the Society of American Travel Writer Travel Photographer of the Year in 2005 and 2006. Plaintiff resides in Denver, Colorado.

2. On information and belief, Perikin Inc. is a domestic profit corporation existing under the laws of the State of New Mexico, with headquarters in Albuquerque, New Mexico. Perikin Inc. offers complete sustainment, renovations, restoration, modernization, and environmental services[1].

3. On information and belief, Perikin LLC is a Foreign Limited Liability Company existing under the laws of the State of New Mexico, with headquarters in Albuquerque, New Mexico. Perikin LLC offers complete sustainment, renovations, restoration, modernization, and environmental services[2].

JURISDICTION AND VENUE

4. This is a civil action seeking damages for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).

5. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).

6. This Court has personal jurisdiction over the Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that a substantial part of the acts of infringement complained of herein occurred in this District.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

7. Plaintiff captured the photograph, “20121008_nmtex_2026.jpg” (“Copyrighted Photograph”) on October 10, 2012 in Albuquerque, New Mexico. Plaintiff captured the Copyrighted

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[1] www.perikin.com (last visited June 16, 2016)

[2] Id.

Photograph by securing permission to use a building rooftop at a specific time of day to take advantage of the evening light. Exhibit A.

8. Plaintiff registered Copyrighted Photograph with the United States Copyright Office on March 5, 2013 (Registration No.: VAu 1-132-209). Exhibit B.

9. Plaintiff published the Copyrighted Photograph on www.blaineharrington.photoshelter.com/gallery-image/Albuquerque-City-Views-and-Architecture/G0000xIBHIGtbkS8/I00007.kIU4u7eqY/C0000lWfxC0wuwR8 (last visited Apr. 10, 2017), on or about December 16, 2012. Exhibit C.

10. Beginning on or about November 8, 2014, Defendants copied and posted the Copyrighted Photograph to the following URL: www.perikin.com (last visited June 16, 2016). Exhibit D.

11. Defendants own and operate the following website: www.perikin.com, which market the services of Perikin, displays examples of work performed by Perikin, and provides contact information for Perikin, among other information relating to the business of Perikin.

12. Defendants displayed the Copyrighted Photograph as a full page banner on the home page of the above-referenced website. Exhibit D.

COUNT I: INFRINGEMENT OF COPYRIGHT PURSUANT TO 17 U.S.C. §101 ET SEQ.

13. Plaintiff incorporates herein by this reference each and every allegation contained in each paragraph above.

14. Plaintiff is, and at all relevant times has been, the copyright owner or licensees of exclusive rights under United States copyright with respect to certain copyrighted photograph, including but not limited to the Copyrighted Photograph, of which is the subject of a valid

Certificate of Copyright Registration issued by the Register of Copyrights. The date of registration for “20121008_nmtex_2026.jpg“ is within three months of the initial publication of the work on December 16, 2012.

15. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce the Copyrighted Photograph and to distribute the Copyrighted Photograph to the public.

16. Plaintiff is informed and believes that Perikin, without the permission or consent of Plaintiff, has used the Copyrighted Photograph on Perikin’s public, commercial website, www.perikin.com. In doing so, Perikin violated Plaintiff’s exclusive rights of reproduction and distribution. Perikin’s actions constitute infringement of Plaintiff’s copyrights and exclusive rights under copyright.

17. Plaintiff is informed and believes that the foregoing act of infringement was willful and intentional, in disregard of and with indifference to the rights of Plaintiff.

18. As a result of Perikin’s infringement of Plaintiff’s copyrights and exclusive rights under copyright, Plaintiff is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for Perikin’s infringement of the Copyrighted Photograph. Plaintiff is further entitled to their attorney’s fees and costs pursuant to 17 U.S.C. § 505.

COUNT II: INFRINGEMENT OF COPYRIGHT PURSUANT TO 17 U.S.C. §101 ET SEQ.

19. Plaintiff incorporates herein by this reference each and every allegation contained in each paragraph above.

20. Plaintiff is, and at all relevant times has been, the copyright owner or licensees of exclusive rights under United States copyright with respect to certain copyrighted photograph, including but not limited to the Copyrighted Photograph, of which is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights. The date of registration for “20121008_nmtex_2026.jpg“ is within three months of the initial publication of the work on December 16, 2012.

21. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce the Copyrighted Photograph and to distribute the Copyrighted Photograph to the public.

22. Plaintiff is informed and believes that Garcia, without the permission or consent of Plaintiff, has used the Copyrighted Photograph on Perikin’s public, commercial website, www.perikin.com. In doing so, Garcia violated Plaintiff’s exclusive rights of reproduction and distribution. Garcia’s actions constitute infringement of Plaintiff’s copyrights and exclusive rights under copyright.

23. Plaintiff is informed and believes that the foregoing act of infringement was willful and intentional, in disregard of and with indifference to the rights of Plaintiff.

24. As a result of Garcia’s infringement of Plaintiff’s copyrights and exclusive rights under copyright, Plaintiff is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for Garcia’s infringement of the Copyrighted Photograph. Plaintiff is further entitled to their attorney’s fees and costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

A. Declaring that Defendant's unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act;

B. Immediately and permanently enjoining Defendant, their officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing Plaintiff's Copyrighted Photograph without consent or otherwise infringing Plaintiff's copyright or other rights in any manner;

C. Ordering Defendant to account to Plaintiff for all gains, profits, and advantages derived by Defendant by their infringement of Plaintiff's copyright or such damages as are proper, and since Defendant intentionally infringed Plaintiff's copyright, for the maximum allowable statutory damages for each violation;

D. Awarding Plaintiff actual and/or statutory damages for Defendant's copyright infringement in an amount to be determined at trial;

E. Awarding Plaintiff his costs, reasonable attorney's fees, and disbursements in this action, pursuant to 17 U.S.C. § 505; and

F. Awarding Plaintiff such other and further relief as is just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which there is a right to jury trial.

Dated: May 9, 2017

_____/s/____*David C. Deal*___________
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Local Counsel for Plaintiff

EXHIBIT A

EXHIBIT B

Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Register of Copyrights, United States of America

Registration Number
VAu 1-132-209

Effective date of registration:
March 5, 2013

Title

Title of Work: Blaine Harrington III Photography 20120116-20121129 12,692 Unpublished Photos

Completion/Publication

Year of Completion: 2012

Author

- **Author:** Blaine Harrington III

Author Created: photograph(s)

Work made for hire: No

Citizen of: United States **Domiciled in:** United States

Copyright claimant

Copyright Claimant: Blaine Harrington III

7533 South Overlook Way, Littleton, CO, 80128, United States

Limitation of copyright claim

Material excluded from this claim: text, jewelry design, architectural work, 2-D artwork, sculpture, map

New material included in claim: photograph(s)

Rights and Permissions

Name: Blaine Harrington III

Email: blaineharr@comcast.net **Telephone:** 303-932-9062

Address: 7533 South Overlook Way

Littleton, CO 80128 United States

Certification

Name: Blaine G. Harrington III

Date: March 5, 2013

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EXHIBIT C

blaineharrington.photoshelter.com
MY ACCOUNT
CART
Blaine Harrington
PHOTOGRAPHY
GALLERIES
SEARCH
ABOUT
CONTACT
LIGHTBOX
Albuquerque-City Views and Architecture
Download
Add to Lightbox
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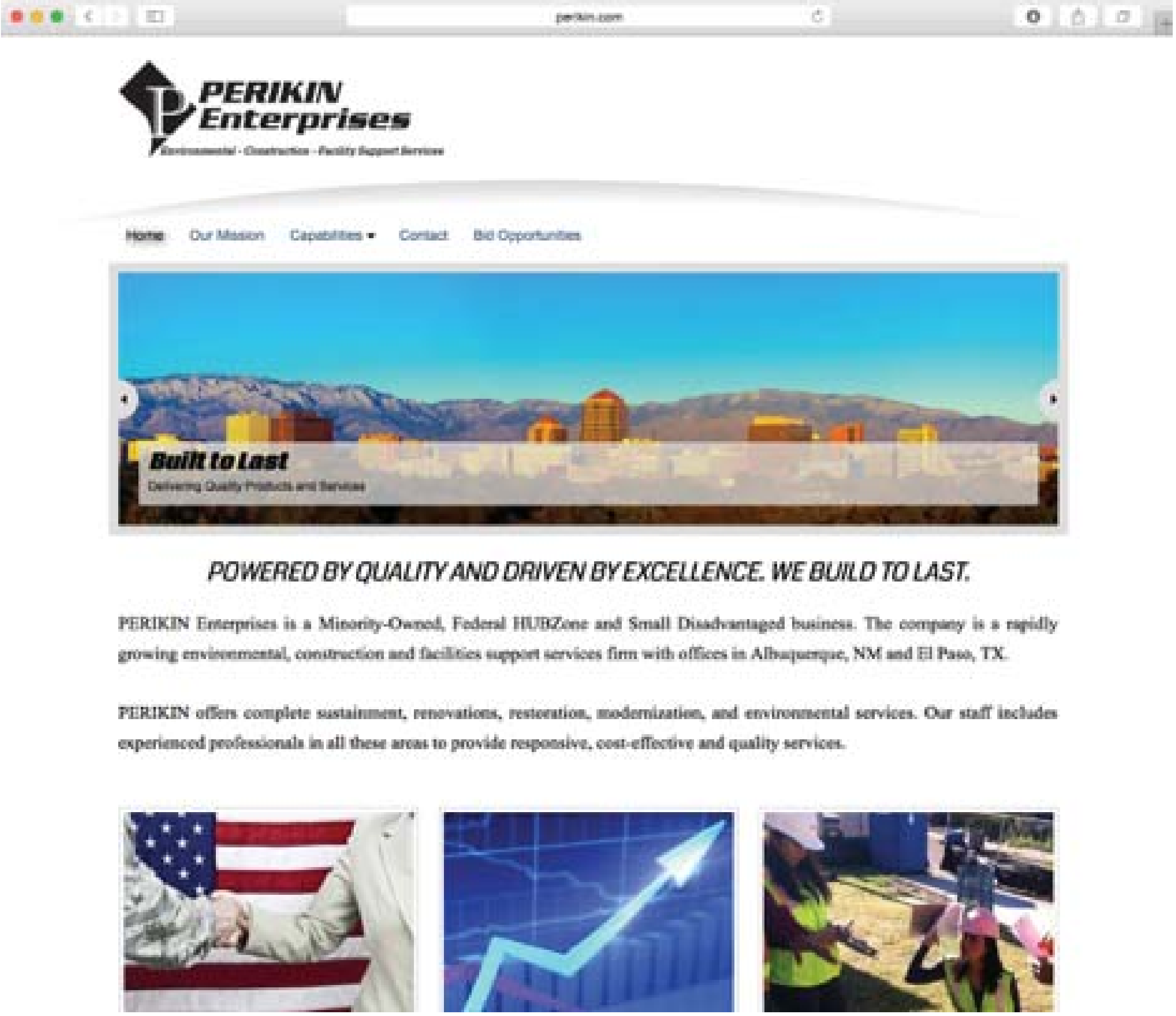
NEXT >
Panoramic view of the skyline of downtown Albuquerque, New Mexico USA
COPYRIGHT: ©2012 Blaine Harrington III ALL RIGHTS RESERVED
RESTRICTIONS: This image is registered with the United States Copyright Office.
KEYWORDS:
Albuquerque, Albuquerque Plaza, America, American Southwest, Bank of Albuquerque, Bank of Albuquerque Building, Bank of Albuquerque Tower, Bernalillo County, Buildings, Cityscape, Digital, Downtown, Downtown Albuquerque, Horizontal, Mountains, New Mexico, North America, Panorama, Panoramic View, Polarizer, Sandia Mountains, Skyline, Travel, Travel Destination, US, USA, United States
COMMENTS
You must be logged in to leave comments. Click here to log in.

EXHIBIT D


perikin.com
PERIKIN Enterprises
Environmental - Construction - Facility Support Services
Home
Our Mission
Capabilities
Contact
Bid Opportunities
Built to Last
Delivering Quality Products and Services
POWERED BY QUALITY AND DRIVEN BY EXCELLENCE. WE BUILD TO LAST.
PERIKIN Enterprises is a Minority-Owned, Federal HUBZone and Small Disadvantaged business. The company is a rapidly growing environmental, construction and facilities support services firm with offices in Albuquerque, NM and El Paso, TX.
PERIKIN offers complete sustainment, renovations, restoration, modernization, and environmental services. Our staff includes experienced professionals in all these areas to provide responsive, cost-effective and quality services.